IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/03/2004

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THE HONOURABLE MR. JUSTICE A. PACKIARAJ

Crl.R.C.No.399 OF 2002

P.Noohukhan ... Petitioner

-Vs-

Paul Raj ... Respondent

Revision filed against the order made in C.C.No.297 of 1998 on the file of the J.M.No.2, Kuzhithurai.

!For petitioner : Mr.K.N.Thampi

^For respondent : Mr.R.Asokan

:O R D E R

The petitioner has been convicted for offence under section 138 Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- in default to undergo 3 months simple imprisonment by the Judicial strate No.II, Kuzhithurai in C.C.No.297 of 1998. Not being satisfied with the quantum of sentence, the complainant has filed this revision for compensation. Therefore, in the circumstances, it may not be necessary for me to advert to the facts in detail suffice to say that the petitioner herein filed a complaint against the respondent for an offence u/s 138 Negotiable Instruments Act on the averment that the respondent borrowed a sum of Rs.1,80,000/- as loan. By way of discharging the said loan, he issu ed a cheque dated 01.12.1998 to the said amount and when the same was presented in the bank, it was returned for want of sufficient funds. After observing all the formalities contemplated under the Act, prosecution was launched.

2.The accused denied having committed any offence. However, the court believed the evidence of the prosecution and convicted the accused as aforesaid.

3.This court sitting in revisionary jurisdiction is called upon to see only the legality, propriety and correctness of the order passed by the learned Magistrate. The punishment stipulated for an offence u/s 138 Negotiable Instruments Act is impriso t up to one year or twice the cheque amount or both and the Supreme Court has held that if the case has been tried by a I Class Magistrate, in view of section 29 Cr.P.C, a fine of Rs.5000/-.

Therefore, in such cases, the maximum punishment contemplated i s one year rigorous imprisonment or Rs.5000/- fine or both. In the present case, the maximum punishment contemplated under the Act has been awarded. This revision can very well be dismissed on the ground that there is no illegality in the order passed by the court below.

4.However, the learned counsel for the petitioner would argue that in his complaint he has asked for compensation and therefore, it is mandatory on the part of the Magistrate to have ordered compensation. The learned counsel also cited the decision he Supreme court in Suganthi Suresh Kumar vs. Jagadeesan in 2002 (1) CTC 315, wherein the cheque amount dishonoured was to the tune of Rs.4,50,000/- and the accused was found guilty and sentenced to undergo imprisonment till the raising of the court and to pay a fine of Rs.5000/-. The Supreme Court had held that such persons should not be left with a flee bite sentence alone. Sentence should be of such a nature, so as

to give proper effect to the objects of the legislation. Therefore, the Supreme Court had remitted the case back to the trial court for awarding appropriate sentence.

5.But in the decision referred to above, Suganthi Suresh Kumar Vs. Jagadeesan, it is seen the sentence was imprisonment till the rising of the court and to pay a fine of Rs.5000/- only. However, in the case on hand, one year rigorous imprisonment ha en awarded, the maximum contemplated under the Act. Hence no illegality is said to have been caused nor can the sentence be said to be a flee bite sentence. The revision could be dismissed on this ground itself.

6.But the learned counsel would press this court to accept the contention that the complainant should be awarded sufficient compensation since the cheque amount is Rs.1,80,000/- and hence wanted a compensation of Rs.1,80,000/- to be awarded, after d ing the fine amount, so as to fall in compliance of section 357(iii) Cr.P.C and hence I feel it necessary to define what 'compensation' mentioned in section 357 Cr.P.C means.

7.The decision of the Supreme Court in Baskaran Vs. Sankaran Vaidyan Balan referred to above states that while fixing the quantum of such compensation, the Magistrate has to consider what would be the reasonable amount of compensation payable to the plainant. Therefore, it does not ipso facto mean that the word 'compensation' means the cheque amount. The reasonable amount has to be computed independently.

8.The Supreme Court has invoked section 357 Cr.P.C to pay compensation to the accused. However, we will have to analyze the meaning of compensation as contemplated u/s 357 Cr.P.C which reads as follows :

357.Order to pay compensation:-

1)When a court imposes a sentence of fine or a sentence (including a

sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied -

b)in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil court; and

Sub section 3 of section 357 Cr.P.C reads as follows:-

3)When a court imposes sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order of the person who has suffered any loss njury by reason of the act for which the accused person has been so sentenced.

Sub section 5 of section 357 Cr.P.C reads as follows:-

5)At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

9.Oxford Dictionary defines the word compensation as "something awarded to compensate for loss, suffering, injury". Therefore, the question that arises for consideration is what is the loss that has been caused to the complainant.

10.A cumulative reading of the above provisions would show that the compensation contemplated to be given to the complainant is the loss that he has suffered on account of the cheque having been dishonoured. So, for example, if the complainant had p sed to buy a property on the cash to be received from the bank, on deposit of the cheque and if the cheque has been dishonoured, he has suffered a loss by not purchasing the property. However, the fact remains that still he can collect the money through civil court from the accused as far as the cheque amount is concerned. Therefore, compensation does not necessarily mean the cheque amount. But it is the loss that has been suffered by the complainant, and what is the loss has to be pleaded in the trial.

11.In the present case, we have to see whether the complainant has suffered any loss which has to be necessarily compensated. The averment in the complaint and the offence would only disclose that the cheque has been dishonoured and the complainant not able to realize the amount on that date. However, his right to get the money does not cease. In a prosecution u/s 138 Negotiable Instruments Act, prosecution should have been launched within one month after giving 15 days time for the accused to pay the amount which would roughly come within 45 days after the receipt of the notice. However the complainant has a right to approach the civil court to seek his remedy within three years. Therefore, by stating that the cheque has been dishonoured, it cann ot be said that he had suffered a loss. The loss accrues only when his right to exercise his remedy ceases. This line of thinking can be taken from

the language used by the Supreme Court in Baskaran Vs. Sankaran Vaidyan Balan which reads, "It has be to b e said that while fixing the quantum of such compensation, the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant."Therefore, this makes it abundantly clear that the Supreme Court has intended compen sation to mean other than that what is mentioned in the cheque. In other words, if the intention of the Supreme Court was to make good the loss, they would have stated that the quantum of such compensation would be the cheque amount.

12.It is pertinent to note that the penal clause does not contain any compensation to be awarded. It is only by virtue of section 357 Cr.P.C, the Courts have awarded compensation. Therefore, my interpretation is only with 'Compensation' as mentioned section 357 Cr.P.C and not of any other compensation mentioned in any other Act or for that matter in the Negotiable Instruments Act itself. Since there are no provisions in the Negotiable Instruments Act to award compensation as a penalty u/s 138 Negoti able Instruments Act, though section 117 of the Negotiable Instruments Act contemplates compensation. But again, it has to be noted that in the present case, the petitioner has not suffered any loss as contemplated u/s 357 Cr.P.C.

13.In the present case, when the section provides a fine of twice the amount, the complainant or his counsel should have requested the court to transfer the case u/s 325 Cr.P.C either to the Chief Judicial Magistrate or to the Chief Metropolitan Mag ate to award proper and adequate sentence. Having slept over in the trial court, they may not be justified in agitating the matter here since this court could take judicial notice of the fact that nearly 10% of the revisions pending in this court relates to revision for enhancement of sentence. Therefore, in the circumstances, I do not feel that any interference is called for.

14.In the result, the revision fails and the same is hereby dismissed.

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To

1.The District Munsif Cum J.M. Vilathikulam

2.-do- Through the Chief Judicial Magistrate